



# SBA Policy Notice

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**TO:** All SBA Employees

**CONTROL NO.:** 5000-939

**SUBJECT:** Changes to International Trade Loan Programs as a result of changes to the Small Business Act

**EFFECTIVE:** 12-17-2004

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On December 8, 2004, the FY05 Omnibus Appropriations Act (P.L. 108-447) was signed into law. Included in the Omnibus Appropriations Act is the Small Business Reauthorization and Manufacturing Assistance Act of 2004 ("Reauthorization"). As a result of changes in the law, the following changes to the International Trade Loan program are made and are effective as of the date of enactment (December 8, 2004). Amendments will be made to SBA's Standard Operating Procedures (SOP) to incorporate these changes as soon as possible.

## **International Trade Loans**

Section 7(a)(16)(A) of the Small Business Act ("SBAAct") has been amended to provide that, if SBA determines that an International Trade ("IT") loan "will allow an eligible small business concern that is engaged in or adversely affected by international trade to improve its competitive position," SBA can make such a loan to assist the concern in:

- "(i) the financing of the acquisition, construction, renovation, modernization, improvement, or expansion of productive facilities or equipment to be used in the United States in the production of goods and services involved in international trade; or
- (ii) the refinancing of existing indebtedness that is not structured with reasonable terms and conditions."

Section 7(a)(16)(B) of the SBAAct has been amended to provide that each IT loan "shall be secured by a first lien position or first mortgage on the property or equipment financed by the loan *or on other assets of the small business concern.*" (The Reauthorization added the italicized language.) Thus, additional collateral may be accepted to ensure that the loan is fully collateralized. The requirement for a first security interest on the property or equipment financed by the loan continues to be mandatory for all IT loans.

The only eligible use of proceeds for an IT loan is the acquisition, construction, renovation, modernization, improvement or expansion of long-term fixed assets or the refinancing of an existing loan used for these same purposes, subject in both cases to the other applicable requirements of the SBAAct. There can be no working capital as part of an IT loan or as part of any refinancing.

The Reauthorization adds refinancing as an eligible use of proceeds. In accordance with SBA policy for refinancings generally, all refinancing requests in the IT Loan Program must

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**EXPIRES: 12-1-2005**

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SBA Form 1353.1 (12-93) MS Word Edition; previous editions obsolete  
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demonstrate that the act of refinancing will also provide a substantial benefit to the small business. (SOP 50-10(4), Subpart A, Chapter 2, para. 12)

### **Changes in Definitions**

The Reauthorization adds Section 7(a)(16)(C) to the SBA Act. The new section amends the definition of a small business concern engaged in international trade. A small business concern is engaged in international trade if, as determined by SBA, “the small business concern is in a position to expand existing export markets or develop new export markets.” Under the previous version of the SBA Act, the small business concern was required to demonstrate that it was in a position to “significantly” expand its existing export markets.

The Reauthorization also adds Section 7(a)(16)(D) to the SBA Act. The new section amends the definition of a small business concern adversely affected by international trade. A small business concern is adversely affected by international trade if, as determined by SBA, “the small business concern (i) is confronting increased competition with foreign firms in the relevant market; and (ii) is injured by such competition.” This replaces the previous version of the SBA Act that required the small business concern to demonstrate that it was confronting increased “direct” competition with foreign firms in the relevant market.

The Reauthorization also adds Section 7(a)(16)(E) to the SBA Act. The new section provides that in order to demonstrate the injury required by Section 7(a)(16)(D)(ii), the small business concern can submit, and SBA must accept, any finding of injury by the International Trade Commission or the Secretary of Commerce pursuant to chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2341 et seq.).

Lenders and SBA processing offices are reminded that there continues to be a requirement for the IT applicant to provide a business plan that provides sales projections, identifies the assumptions to support these projections, and addresses how the applicant is eligible under the special IT requirements. (SOP 50-10(4), Subpart C, Chapter 1, para. 7.)

### **Exception to the \$1.5 million SBA Guaranty limit**

The maximum gross amount (\$2 million) and SBA-guaranteed amount (\$1.5 million) for an IT loan is the same as a regular 7(a) loan. However, there is an exception to the maximum SBA 7(a) guaranty amount to one borrower (including affiliates).

Section 7(a)(3)(B) of the SBA Act provides for a maximum SBA guaranty to a small business (including affiliates) of \$1,750,000 under the following circumstances: (1) The small business has been approved for an IT loan, and (2) the business has applied for a separate working capital loan (or loans) under EWCP and/or other 7(a) loan programs. When there is an IT loan and a separate working capital loan, the maximum SBA guaranty on the combined loans can be up to \$1,750,000 as long as the SBA guaranty on the working capital loan does not exceed \$1,250,000. (Prior to the Reauthorization, the maximum guaranty amount on the combined loans was \$1,250,000 of which not more than \$750,000 guaranty amount could be applied to the working capital loan).

In all cases, to receive the maximum SBA guaranty amount of \$1,750,000, the financing package for the small business must include an IT loan that was approved after December 7, 2004.

## **Questions**

SBA district offices must notify 7(a) Lenders of these changes. SBA district offices or centers with questions on this notice may direct their questions to Sloan Coleman via email at [w.coleman@sba.gov](mailto:w.coleman@sba.gov). Lenders are directed to forward questions to their local SBA field office.

Hector V. Barreto  
Administrator